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UNESCO/DA/Conf. 3/34

UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATION

COMMITTEE OF COPYRIGHT EXPERTS

(Washington, D. C., 23 October - 4 November 1950)

OFFICIAL REPORT

On the invitation of the United Nations Educational, Scientific, and Cultural Organization, a Committee of Experts in the field of copyright met in the Old House Office Building, House of Representatives, U. S. Congress, Washington, U. S. A. from Monday, October 23, to Saturday, November 4, 1950, inclusive. The Library of Congress and the U. S. Copyright Office acted as host and handled the arrangements for the conference. Fifteen experts from various countries were present, together with the Head of the Copyright Division of UNESCO, official representatives of the two international bodies commonly known as the Berne Union and the Pan-American Union and a number of advisers and observers. A list of those participating is annexed to this Report.

In the invitation extended by UNESCO it was made clear, and the circumstance was reiterated throughout the proceedings by many of those participating, that the experts were to deliberate in their individual capacities and not in any sense as representatives of their governments. However, the views of governments had been requested by a UNESCO questionnaire covering a wide field of inquiry commencing with the question "Is it desirable to convene an inter-governmental conference to consider, and if appropriate, to draft a Universal Copyright Convention?" To that query the replies received were almost unanimously favorable. The questions as to specific principles on which a Convention might be based elicited a wide variety of interesting comments from 42 governments, which afforded an excellent background for the studies of the experts as they dealt with the problems concerning which UNESCO sought their advice.

Consistently with established practice in such meetings, no matter of policy was adopted on the basis of a vote, but in instances where complete unanimity could not be achieved, the recommendations, based on a consensus of the meeting, were coupled with a statement that some had urged views wholly or partly divergent as indicated in the respective reports. Thus complete freedom of discussion prevailed; no person was refused

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the privilege of addressing the meeting as frequently or at whatever length he felt necessary. A marked spirit of free cooperation characterized all the discussions, with a mutual desire to explore all possible avenues of approach towards unanimity, at the same time taking cognizance of all practical difficulties in the way of the widest possible dissemination of scientific and cultural information. The ultimate goal and the main highway by which it might be reached were accepted by all; very considerable progress was achieved in clearing away obstacles which hitherto have blocked the way.

The opening meeting on Monday morning, October 23, 1950, was called to order by Dr. Francois Hepp, Head of the Copyright Division of UNESCO. He extended the regrets of Professor Jean Thomas, Head of the Department of Cultural Activities of UNESCO, who unfortunately had been prevented from attending the conference by illness just as he was about to leave Paris. Dr. Hepp then asked Dr. Luther H. Evans, Librarian of Congress, to address the meeting as its host. Following addresses of welcome by Dr. Evans, and on behalf of the Secretary of State Dean Acheson by Mr. Winthrop Brown, Dr. Hepp tendered the address which Professor Thomas had desired to deliver personally, and placed on the table his own formal technical report, of which he gave a brief, oral summary, indicating the scope and purpose of the meetings which were to follow.

Proceeding then to the election of officers, the meeting unanimously named the following: Chairman, Luther H. Evans, Librarian of Congress, Washington, U. S. A.; First Vice President, Plinio Bolla, former federal judge, Lausanne, Switzerland; Second Vice President, Marcel Boutet, President of the International Literary and Artistic Association, Paris, France; Rapporteur, W. P. J. O'Meara, K. C., Assistant Undersecretary of State, Ottawa, Canada.

At this point the Chairman requested Mr. Hepp to summarize the replies received in response to the UNESCO questionnaire, following which each of the Experts was asked to submit his general views before the meeting should proceed to detailed consideration of specific problems. The comments of each speaker, reported in detail in the minutes hereto annexed, indicated satisfaction with the wide response to the questionnaire and an eagerness to discuss the resultant problems in a cooperative manner.

The Chairman informed the meeting of the broad setting in which the report of its work and its recommendations will be considered by UNESCO. A discussion ensued as to the manner of correlating the functions of the contemplated General Conference

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of UNESCO on the one hand and the inter-governmental conference on the other hand. Some Experts expressed doubts as to which ought to have precedence; others were concerned as to the possible effect of the rules adopted by UNESCO at Florence in June 1950, particularly as to whether the procedure therein contemplated was in harmony with traditional practice as regards diplomatic conferences for the drafting of international conventions. It was decided to canvass the situation further, which was done in due course. A formal resolution was ultimately adopted as will appear later.

Following some discussion of specific matters to be considered by the meeting, it was agreed that one of the fundamental requisites for further progress was the finding of some formula whereby the members of the Berne Union could adhere to the proposed Universal Convention without affecting their mutual relationships under the Berne Convention. A Sub-Committee was appointed to report on this matter comprising Judge Bolla, Mr. Schulman, Mr. Bodenhausen, and the remaining officers, Messrs. Boutet and O'Meara ex-officio. With most commendable zeal, this Sub-Committee met in the interval between plenary sessions and submitted its report on the following day. On discussion, its recommendations were widely approved but in the light of comments with respect to the situation as regards adherence to the Pan American Conventions, it was proposed that the Sub-Committee, with representatives from the latter group added, might continue its studies in that comparatively new field. Recommendations to the plenary meeting might result from specific suggestions which the experts concerned particularly with the Pan American Union, and who were invited to sit in with the Sub-Committee, might prepare for consideration.

Ultimately those who suggested the revision of the Sub-Committee's report in this regard concluded that they need not press the proposals which they hesitated to crystallize into specific form without opportunity of consulting other countries adhering to the Pan American Conventions. Accordingly the report of this Sub-Committee was received and adopted in the following language:

"The Subcommittee which was directed to consider measures calculated to avoid the danger that the Universal Convention might be prejudicial to the Literary and Artistic Union, considers it necessary that the following clauses should be inserted either in the Universal Convention or in an Additional Protocol which would be signed by the signatories of the Universal

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Convention who belong to the Literary and Artistic Union:

"1. In relations between countries which have adhered to the Berne Convention of September 9, 1886, and to the subsequent revisions thereof, the said Convention and the said revisions thereof shall alone be applicable. Nevertheless, works simultaneously published in a country of the Literary and Artistic Union, and in a country which is a party to the Universal Convention but not to the Literary and Artistic Union shall be accorded any additional protection afforded by the Universal Convention.

"2. Countries which withdraw from the Literary and Artistic Union, or which after January 1, 1950 will have withdrawn therefrom, may invoke the benefits of the Universal Convention only in their relations with countries that are not parties to the Literary and Artistic Union."

At this stage it was pointed out and widely agreed that the recommendations of the subcommittees were intended to deal with matters of principle rather than with formalities of drafting and that the appointment of a Drafting Committee would in due course receive consideration. However, even such a committee would be concerned with clear enunciation of the points of agreement and of possible disagreement among the experts at these meetings rather than with details of form which would be for consideration in the document which it is hoped will ultimately embody a Universal Convention. This became very pertinent when discussion ensued as to the problem of whether the recommended provision concerning the countries adhering to the Berne Union ought to be included as an integral part of the proposed convention or as a protocol thereto open for signature specifically by the so-called "Berne countries", it being understood that only those Berne countries which have signed the additional protocol and adopted it should be eligible to sign the new convention. It was decided that the scope and function of this meeting of Experts were merely to point out for the guidance of the ultimate diplomatic conference the two methods available to it in this regard.

Reference was next made to the reply of the United States of America to item III, 2 of UNESCO's questionnaire with respect to limitation of the form and extent of requirements which any State may impose upon a work of foreign origin. Since formalities required by the United States are regarded as one of the serious obstacles in the way of the Universal Convention, that reply has great significance. It was proposed to create a specific procedure whereby a work may be declared not to be dedicated to the public by means of a device adaptable in any country and in any language. The proposal was as follows:

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"The inscription upon a published work of the symbol © with the name of the author or other copyright proprietor and the year of publication shall be deemed a declaration that the work is not dedicated to the public and shall by virtue thereof be sufficient to satisfy the provisions of the law of any contracting State which requires a notice or other condition of the commencement of copyright, provided that this provision shall not apply in respect of the work of which a national of such State is the author or which is first published in that State.

"The said inscription shall be imprinted in a manner and a location reasonably designed to give notice of said reservation of copyright."

Resultant discussion evoked many expressions of approval of the general principle submitted and some constructive criticism. Particularly, it was urged precise definition of terms was important. The point was made that the proposal presumed variations in national laws, this being of the essence of the concept of national treatment. Moreover, the Committee in its Paris meeting had recommended a convention based on the principle of assimilation, or national treatment. The proposal under consideration would provide that, as to international transactions, a universal copyright symbol was to take the place of the registration formalities required by individual national legislation. At this point, it was agreed to refer the proposal to a working subcommittee to settle a precise text for disposal by a subsequent plenary meeting. The committee was to consist of Judge Bolla and Messrs. de Sanctis, Fernandez del Castillo, Blake, Schulman, Boutet and O'Meara. In due course, the subcommittee recommended as follows:

- "1. The Universal Convention ought to insure to works originating in any one of the contracting countries the same protection in all the other contracting countries as such countries accorded to works originating within their respective territories.
- "2. With respect to published works entitled to claim protection under the Convention, all the contracting countries in which the existence or the enjoyment of copyright would be conditioned upon notice, registration, deposit, or any other such requirement shall recognize these conditions as fully satisfied if the author or other proprietor shall signify his intention not to dedicate the work to the public by affixing to the copies of the work from and after its first publication the symbol "©", accompanied by the name of the author, or other proprietor, and the year of first publication of the work. The inscription shall be imprinted in a manner or location reasonably designed to give notice of such reservation of copyright.

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- "3. The above provision ought not to apply in any such country with respect to works published for the first time within such country and, if the law of the country so provides, to works published by one of its nationals outside that country.
- "4. The matter of determining whether the definition in paragraph 3, above, shall also apply to other provisions of the Convention is to be deferred for a further independent consideration.
- "5. Similarly, the matter of defining the concept of publication and the protection of unpublished works is to be deferred for further independent consideration."

A propos the suggestion that the above proposal be referred to a subcommittee for detailed study, consideration was given to the respective functions of special working subcommittees and the Drafting Committee, particularly as to whether the drafting committee should have authority only with respect to form or also with respect to substance. Finally it was agreed that, as suggested by the Chairman, the Drafting Committee, while concerning itself principally with form, might properly deal also with matters of substance where necessary. In practice this broad plan was sanctioned by the consistent practice of referring specific problems to separate working subcommittees whose reports, when approved at a plenary session, were sent to the Drafting Committee for embodiment in its final summation.

The next problem dealt with in plenary session concerned the matter of translation rights. Cognizance was taken of the inherent difficulty of providing a practical rule under which the standard of protection would not be too low for countries producing copyrightable material, nor too high for acceptance by countries desiring to enrich their national literature, or their scientific knowledge, by means of translated works. Further, it was noted that, while perhaps many types of works are equally valuable from a cultural point of view, nevertheless, for certain purposes distinction might be drawn between those of a scientific or educational character and those of other types. Procedure with respect to the seeking of permission to effect a translation and means for insuring competency of the translator were discussed, as well as the desired period during which the author's exclusive right of translation should be maintained. Finally, the question of translations was referred to the existing Special Subcommittee for consideration and report with other matters before it following the weekend adjournment. In accordance with this request, the Special Subcommittee reported as follows on Monday, October 30:

"The Special Committee is of the opinion that translation rights might be dealt with in the Universal Convention in the following manner:

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- "1. The Contracting Countries should grant to the authors of the works protected by the Universal Convention the exclusive right to translate or authorize the translation of such works throughout the whole period of their rights in the original work.
- "2. Nevertheless, any Contracting Country might subject the exercise of this right to restrictions as far as concerns translation into the national language or into one of the national languages of a work for which translation has not been authorized into such language within a prescribed period of time, commencing with the date of first publication. Appropriate measures must be established in order to assure a correct translation and guarantee an equitable remuneration to the copyright proprietor.
- "3. Some of the members of the Special Committee were of the opinion that this specified period should not exceed 3 years; others, that it should be not less than 20 years.
- "4. Some members of the Special Committee were of the opinion that it would be desirable to provide that the authorization to translate should not be granted except in instances where there is grave difficulty to establish contact with the proprietor of the translation right or in case of unreasonable conditions imposed by that person; others disagreed.
- "5. Some members made a suggestion that a special rule be applied for works designed for educational or scientific purposes; others disagreed.
- "6. The Special Committee is of the opinion that it would be desirable to encourage action on the part of all national or international organizations which would tend to facilitate contacts between the interested persons with an aim towards the translation of works."

A further division of the report of the Subcommittee has reference to the relationship between the Universal Convention and the Pan American Conventions with respect to which the Experts who raised the question had reserved the right to present their proposals specifically at a later time. In these circumstances, the Special Committee confined itself to proposing that the recommendation of the Committee of Experts in Paris be confirmed to the effect that no provision of the Universal Convention should be interpreted in such a way as to abridge any legal right of protection derived from any existing convention or bilateral treaty.

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A short discussion was held as regards the competency of the meeting to deal with matters related to but not specifically covered by replies of Governments to UNESCO's questionnaire. The Chairman ruled that such matters were within the purview of the Committee, which might properly offer advice to the Director General on such topics as ways and means of reconciling various conventions. It was also proposed and held to be competent for the Meeting to offer a recommendation that the Director General should consult Governments in regard to matters agreed upon at the Meeting, with request that the results of such consultation be made available before the preparation of submissions for consideration of the Session of the General Conference of UNESCO which is to take place in June 1951.

Prior to vacating the Chair because of his impending departure for Paris to attend a meeting of the Executive Board of UNESCO, Dr. Evans named Judge Bolla, Messrs. Boutet and O'Meara with the two members of the Drafting Committee of the Paris Meeting of Experts, namely, Judge Wyzanski and Mr. Fernandez del Castillo, to constitute the Drafting Committee, which would be required to review and consolidate reports of special subcommittees, as referred to it from time to time.

Dr. Evans then requested Vice President Bolla to take the Chair. To the hearty applause of all the Experts, the Chairman-designate thanked Dr. Evans for his excellent service as Chairman of the Committee during its first week of meetings.

Considerable discussion ensued with respect to the report of the Subcommittee on the relationship between the proposed new Universal Convention and existing conventions, it being pointed out finally by the Chairman that, before the relationship could be dealt with effectively, the characteristics of the proposed new Universal Convention must be defined. Dr. Hepp intervened to comment that decisions of the Experts would be communicated to the various governments before next year's Session of the General Conference of UNESCO and that similarly the Governments would be informed of dissenting opinions as reported by the Experts. Thus the Experts who would attend the UNESCO General Conference could be instructed by their Governments on all points of interest.

The matter of the duration of copyright occupied the attention of the meeting for a considerable time. Several suggestions were considered, particularly a proposal based on the principle of national treatment, tempered by a requirement of minimum protection.

Many Experts offered their views concerning the difficult matter of unpublished works. Eventually the problem was referred to a sub-committee, comprising Mr. Boutet as Chairman, Judge Wyzanski, Messrs. Blake, de Sanctis, Bodenhause, Chediak and O'Meara, with the stipulation that representatives of the Berne and Pan American Unions should, as always, be welcomed at Sub-Committee

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meetings. The members of the committee agreed with the suggestion of the Chairman that the committee should meet both before and after the ensuing afternoon plenary session.

Discussion was resumed concerning the report of the Special Committee on Formalities and Translation Rights and problems arising with respect to the Pan American Conventions. The report was approved, subject to certain revisions to be effected by the Drafting Committee.

The Chairman announced that there remained for consideration four outstanding topics: 1. Retroactivity, 2. Protected works, 3. Country of origin, and 4. A jurisdictional clause.

He then submitted for the consideration of the Experts the question of Retroactivity, pointing out that there existed three possible solutions:

1. The convention should not apply to works which had definitely fallen into the public domain in one of the contracting countries.
2. The various countries might make reservations indicating that they do not intend to protect works which have definitely fallen into the public domain in their own territory. In this case a degree of reciprocity would permit other countries to apply the same rule against countries making these reservations.
3. As one country proposed, there might be a stipulation protecting works which have fallen into the public domain because merely of failure to comply with certain prescribed formalities.

Several members suggested that mention of retroactivity might effectively discourage new countries from adhering to the proposed Universal Convention.

The subject of the country of origin evoked expression of divergent views, some urging the basis recognized in the countries adhering to the Berne Convention as being determined by the country of first publication, in respect of published works, and on the nationality of the author for unpublished works. Others suggested that the nationality of the author be the guiding criterion wherever publication were effected. Following the discussion, the problem was referred to a sub-committee under the chairmanship of Mr. Boutet and consisting of Messrs. Blake, Schulman, Fernandez del Castillo, de Sanctis and O'Meara.

The meeting then proceeded to discuss a definition of the term "publication." The Chairman again suggested three possible methods of attack: 1. a positive definition, 2. a definition by exception, and 3. a combination of the above. It was decided that no action

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ought to be taken by the Committee at this time with respect to the matter which had not been dealt with in the earlier questionnaire, but that UNESCO be requested to seek the views of Governments in order that these may become the basis of study prior to the convening of the Diplomatic Conference which would draft the contemplated Universal Convention.

At this time the Chairman of the Sub-Committee on the Duration of Copyright submitted a report in the following terms:

"The Sub-Committee instructed by the General Committee to study the question of the duration of the protection, after having taken into consideration the propositions which have been laid before it and after having proceeded to an exchange of views among its members, submits hereafter to the General Committee the result of its deliberations:

"1. The duration of the protection granted by the new convention will be governed by the law of the country in which protection is claimed. As far as published works are concerned, this protection cannot be less than a period comprising the life of the author and 25 years after his death or 25 years after the first publication of the work.

"2. The Sub-Committee considers it its duty to note that certain experts are of the opinion that the terms of protection hereinbefore indicated ought to be accompanied by a clause specifying that the countries in which the protection will be claimed will be under no obligation to grant a term exceeding that fixed in the country of origin of the work.

"3. Furthermore, this last view has been expressed also as far as unpublished works are concerned.

"4. It is to be borne in mind that the provisions of the 1st paragraph hereabove apply to the general term of protection but not to certain categories of works for which special terms could be fixed by domestic legislation."

In reply to questions, the Chairman pointed out that two periods are offered as alternatives: the first is based on the concept that the life of the work is extended after the death of the author for reasons of protection, the second is based on the date of first publication without regard to the lifetime of the author. He further explained that the thought in the minds of the committee members in referring to certain categories for which terms of protection might be fixed by domestic legislation was directed not to books but to such works as photographs, works of applied art and the like.

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At this point the Chairman, having just been informed of an attempt to assassinate the President of the United States of America, which country was acting as host to this Committee, expressed in the name of all present the Committee's profound disapproval of this act of cowardice and its extreme gratification in learning that the attempt had failed. Those present rose in respect before greeting the announcement of the Chairman with the resounding applause which signified their complete concurrence in his declaration. Judge Wyzanski expressed appreciation on behalf of the United States and of his American colleagues for this expression of goodwill.

Reverting to the discussion of the sub-committee's report, suggestions were made by way of identifying the works which might be regulated by domestic legislation, the decision of the Chairman being that this matter would be dealt with effectively by the Drafting Committee. Similarly, that committee would deal with the point raised by one of the American Experts as to the implications of reference to "first publication" because of the peculiar national situation whereby unpublished works protected by the common law may obtain optional statutory registration.

The Chairman commented on the final query on UNESCO's questionnaire which might be defined as a "catch-all". It was agreed that UNESCO should be requested to invite the opinions of States on these various special problems raised by other States. Two remaining questions were broached, one being stateless or displaced persons and the other periodic conferences for revision of a Universal Convention. The Chairman suggested in reply that the matter of stateless and displaced persons seemed to be clearly involved in the matter of country of origin which had been referred to a Sub-Committee. It was agreed that the desirability of periodic revision facilities was generally accepted. It was further intimated that a study of the problem of stateless and displaced persons is being made by the United Nations; the meeting agreed with the resultant suggestion that steps be taken to coordinate the inquiries currently being made in that regard.

At this stage the Committee on the Country of Origin submitted its report as follows:

"The Sub-Committee set up by the General Committee to study the question of the country of origin:

"Notes that two views have been clearly expressed, one that protection be based upon the nationality of the author to which could be added the principle of protection based upon the country of first publication, the other giving to the works only the nationality of the country of first publication;

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"Notes as the result of the exchange of views which took place that the supporters of the second view remain of the opinion that it more adequately corresponds to existing juridical, practical and economical considerations;

"Nevertheless, is of the opinion that the solution which might assure the greatest number of adherences to the Universal Convention under existing circumstances could be expressed in the following way:

"The Convention shall apply to works of authors who are nationals of any of the contracting States and to works first published in such States as well."

This was adopted by the meeting, with a few minor suggestions as to terminology being referred to the Drafting Committee.

A further discussion was then had of the Procedure to be followed in carrying out the Recommendations and the preparation for the intergovernmental conference. This resulted in what appears as point II of the final Recommendations.

The Report of the Drafting Committee, which covers in concise and correlated form the decisions reached during the two weeks deliberations, was submitted on Friday afternoon, November third. Pending scrutiny of the Report by the Experts a further resolution was submitted as follows:

The Committee

- "1. congratulates UNESCO on its work of research and information in the field of international copyright and especially on the scientific value and practical usefulness of its Copyright Bulletin;
- "2. recommends that this work of research and information as well as the publication of its Bulletin be continued;
- "3. recommends that, on the basis of working material and facilities already existing, and the international liaison thus far established, consideration ought to be given to preparation of plans for the creation of permanent copyright information service. In the planning of this service it should be borne in mind that the Universal Copyright Convention presumably will be based on national treatment and therefore reliable information on each country's copyright law will be of primary importance;
- "4. notes with satisfaction the ever increasing cooperation between UNESCO and the international organizations competent in copyright matters, especially the Berne Bureau and the Pan American Union. It is recommended that UNESCO

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study the possibilities of even closer cooperation with these organizations concerning point 3 and in the event of the coming into being of the Universal Convention. These plans should take into account particularly possibilities of cooperation in questions which would arise in connection with the new Convention and of avoiding duplication in the publishing of technical material.

It was agreed that this be referred to the Drafting Committee for clearance of final text for Rapporteur.

Various items of the Drafting Committee's report were discussed and settled to the satisfaction of the meeting. The Rapporteur was directed to note in his report a matter raised by one of the experts concerning the problem of avoiding double taxation in transactions with respect to copyright. The consensus of the meeting was that UNESCO should be requested to communicate this expression of views to the various governments whose opinions would be invited in that regard.

The Report of the Drafting Committee in the form finally approved by the plenary meeting is annexed to this report. It will be noted that reference to the names of Experts submitting various comments has been omitted. The daily minutes, also annexed, will afford fully detailed information in this regard.

Messages of good will and offers of cooperation were received from many groups and societies. These were gratefully acknowledged and are noted in the minutes.

As the Conference pressed toward completion of its agenda in anticipation of final adjournment, two sentiments obviously were shared by all participants. First was a feeling of profound gratitude for the many acts of kindness and the splendid hospitality showered upon us by many individuals and groups, with interests in the subject of copyright varying widely in degree and scope. The Rapporteur feels that this expression of appreciation would not be complete unless he personally extended his sincere thanks to the Secretariat, the interpreters, and the many individuals who carried out the housekeeping arrangements with conspicuous success. All may feel a justifiable pride in the success of the meeting which was to no small degree dependent upon their cooperation.

The second feeling, which seemed clearly to be shared by all the experts, was one of satisfaction with a difficult task well done.

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This is exemplified by the message sent on behalf of the Conference to Dr. Luther Evans in Paris at a meeting of the Executive Board of UNESCO in the following terms:

"Copyright Experts in Washington send greetings. Stop. Following your good lead Committee's work has reached successful conclusion and way is now open to Universal Convention protecting literary and artistic works."

W. P. J. O'Meara,
Rapporteur.

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UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION

COMMITTEE OF COPYRIGHT EXPERTS
October 23rd to November 4th, 1950
Washington, D. C.

LIST OF PARTICIPANTS

OFFICERS OF THE CONFERENCE

CHAIRMAN: Luther H. Evans, Librarian of Congress, Washington, D. C.
FIRST VICE-CHAIRMAN: Plinio Bolla, Former Federal Judge, Lausanne, Switzerland.
SECOND VICE-CHAIRMAN: Marcel Boutet, President, International Literary and Artistic Association, Paris, France.
RAPPORTEUR: W. P. J. O'Meara, K. C., Assistant Under Secretary of State, Department of State, Ottawa, Canada.

THE EXPERTS

AMIL ARTUS, Director General, Ministry of Justice, Ankara, Turkey.
J. L. BLAKE, Head, Industrial Property Department, Patent Office, Board of Trade, London W. C. 2, England.
G. H. C. BODENHAUSEN, Professor, Utrecht University, The Hague, Netherlands.
PLINIO BOLLA, Former Federal Judge, Lausanne, Switzerland.
MARCEL BOUTET, President, International Literary and Artistic Association, Paris, France.
NATALIO CHEDIAK, Lawyer and President, Corporation of National Authors (CNA) Havana, Cuba.
VALERIO DE SANCTIS, Lawyer, Rome, Italy.
LUTHER H. EVANS, Librarian of Congress, Washington, D. C.
GERMAN FERNANDEZ DEL CASTILLO, Vice-President, Mexican Academy of Jurisprudence and Legislation, Mexico, D. F., Mexico.
TORBEN LUND, Professor, University of Aarhus, Risskov by Aarhus, Denmark.
W. P. J. O'MEARA, K. C., Assistant Under Secretary of State, Department of State, Ottawa, Canada.
PIERRE RECHT, Director General, Ministry of Public Education, Brussels, Belgium.
JOHN SCHULMAN, Lawyer, Hays, St. John, Abramson & Schulman, New York, New York.

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THE EXPERTS

DR. NARES C. SEN-GUPTA, Senior Advocate Supreme Court of India
& Calcutta High Court, Calcutta, India.
CHARLES E. WYZANSKI, JR., Judge, United States District Court,
Boston, Massachusetts.

TECHNICAL ADVISER: Arthur Fisher, Acting Register of Copyrights,
Library of Congress, Washington, D. C.
CONFERENCE DIRECTOR: Phillip Thayer, Dean, School of Advanced
International Studies, Johns Hopkins
University, Washington, D. C.

UNESCO SECRETARIAT

François E. Hepp, Head, Copyright Division, UNESCO, Paris, France.
Arpad Bogsch, Jr., Copyright Division, UNESCO, Paris, France.
William S. Roach, Copyright Division, UNESCO, Paris, France.

REPRESENTATIVES OF INTERNATIONAL ORGANIZATIONS

BUREAU OF THE BERNE UNION: Charles Magnin, Vice-Director, Bureau
International de la Propriété Intellectuelle, Berne, Switzerland;
Maurice Virlogeux, Counselor, Bureau International de la Propriété
Intellectuelle, Berne, Switzerland.

PAN AMERICAN UNION: Manuel S. Canyes, Chief, Division of Legal
Affairs, Washington, D. C.

UNITED NATIONS: Abraham Howard Feller, General Counsel and Director
of the Legal Department, Lake Success, N. Y.; Hilding Eek, Lake
Success, N. Y.; H. C. Kingstone, Legal Department, Lake Success,
N. Y.; Arthur Sweetser, United Nations Information Center, Washington,
D. C.; International Labor Organization: Thacher Winslow, Director,
Washington Branch, International Labor Office, Washington, D. C.

GOVERNMENTAL OBSERVERS

AUSTRALIA: Harold L. White, Commonwealth National Librarian, Canberra.
CANADA: Charles Stein, Under Secretary of State, Department of State,
Ottawa.
CEYLON: G. S. Peiris, Second Secretary, Embassy of Ceylon,
Washington, D. C.

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GOVERNMENTAL OBSERVERS

COLOMBIA: Misael Pastrana Borrero, Minister Counselor, Colombian Embassy, Washington, D. C.
EL SALVADOR: Dr. Carlos Serrano Garcia, Second Secretary, El Salvador Embassy, Washington, D. C.
IRAN: Mohammad M. Goudarzi, First Secretary, Iranian Embassy, Washington, D. C.
ITALY: Raffaello Marras, Third Secretary, Italian Embassy, Washington, D. C.
JAPAN: Fujimaro Kubota, Director of Administrative Bureau, Ministry of Education, Tokyo; Kazuo Matsumoto, Secretary of the Ministry of Foreign Affairs, Tokyo.
NORWAY: Erling Christophersen, Cultural Attache, Norwegian Embassy, Washington, D. C.
SWEDEN: Ralf Ragnar Petri, Attache, Swedish Embassy, Washington, D. C.
UNITED STATES: Roger C. Dixon, Acting Chief, International Business Practices Policy Staff, Department of State, Washington, D. C.
VENEZUELA: Martin Perez Matos, First Secretary of Venezuelan Delegation to the Pan American Union, Washington, D. C.

ORGANIZATIONS REPRESENTED

AMERICAN BAR ASSOCIATION: Section of Patent, Trade Mark and Copyright Law; Section of International and Comparative Law.
AMERICAN BOOK PUBLISHERS COUNCIL
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INTERNATIONAL PUBLISHERS CONGRESS
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MOTION PICTURE ASSOCIATION
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MUSIC PUBLISHERS PROTECTIVE ASSOCIATION
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NATIONAL MUSIC COUNCIL
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